

DOI: <https://doi.org/10.63332/joph.v5i5.1597>

Practical and Judicial Applications of Civil Liability in the Medical Partnership Contract

Mariwan Salih Ahmed¹, Ali Salah Al-Hadithi²

Abstract

Identifying and cataloging medical errors is nearly impossible due to their abundance and diversity, stemming from the ever-evolving nature of the medical profession whether in terms of scientific theories, treatment methods, or the medical devices and tools used. Therefore, this research aims to explore certain practical applications of medical error committed by physicians within the framework of a medical partnership contract, as such cases are among the most common and widespread in medical practice. The study seeks to examine, contextualize, and analyze these instances from various legal perspectives.

Keywords: Medical Partnership, Civil Liability, Medical Error, Medical Harm, Compensation.

Introduction

Medical partnership contracts concluded between physicians where one doctor temporarily substitutes for another in a private clinic are like any other contracts and must be based on mutual agreement between the two parties. This requires the consent of both the clinic-owning physician and the substitute physician, who operates the clinic during the agreed-upon period. This type of contract has a particular nature, as it is based on mutual trust between the two parties.

Accordingly, a contractual relationship is established in the medical partnership contract between the original clinic-owning physician, the substitute physician operating the clinic in the absence of the original, and the patient (the client who seeks treatment at the clinic). When the original physician places a sign on the clinic door, it serves as an invitation to contract, anticipating an offer from a prospective client, which the physician may then accept, thereby forming a contract between them.

While this may initially seem straightforward, complexity arises when considering the contract's effect on third parties namely, the patient or client visiting the clinic with the intention of seeing the original physician, not the substitute. A patient may visit the clinic of a well-known and experienced physician, only to find that another doctor is temporarily present instead. In such a case, the patient or their representative has the choice to either accept treatment from the substitute physician or not.

Disputes arise when a different physician operates the clinic in the absence of the original physician and examines patients, whether they are new visitors or returning ones. This analysis is grounded in reality and aims to legally characterize the contract, particularly given the

¹ Assistant Lecturer, University of Kirkuk, College of Law and Political Science, Department of Law, Email: ms230121pla@st.tu.edu.iq

² Assistant Professor of Civil Law - College of Law – University of Tikrit.



legislative and even jurisprudential shortcomings in addressing such cases. This necessitates intervention from lawmakers and legal scholars to propose appropriate solutions by clearly defining the obligations of physicians involved in the contract and their liabilities in the event of a breach of general legal principles.

The purpose of civil liability is to compensate for damages arising from contractual breaches or harmful acts. The discussion of liability pertains to the involved parties, its proof, and its expiration, and this falls within the general theory of obligations. In this research, the discussion of medical liability serves as a prelude to the more significant subject that follows namely, the discussion of compensation.

First: Importance of the Study

The significance of this research lies in shedding light on a real-life situation prevalent in society namely, the substitution of one physician for another in a private clinic. Typically, the substituting physician is less well-known than the original clinic-owning physician. This leads us to highlight the legislative shortcomings concerning the substitution of physicians in private clinics, the nature of the substitution agreement, and the implications this has on the will of the patient who visits these clinics. It also underscores the ambiguity surrounding the liability of such physicians in the event of medical errors. This study represents a serious initial effort to explore this concept an effort that, as is often the case, begins with challenges, but through which we aim to illuminate all dimensions of the topic.

Second: Research Problem

One of the main issues and challenges posed by the medical partnership contract is the legislative gap regarding such contracts. This necessitates bridging the legislative void and providing a precise legal treatment, ultimately aiming to establish a legal framework that effectively regulates medical partnership contracts. Accordingly, the central question guiding this study is: What are the judicial applications regarding breaches by contracting physicians of their mutual obligations in a medical partnership contract?

Third: Research Objectives

The concept of civil liability arising from breaches of the medical partnership contract has not received the attention it deserves in Arab legislation in general, and in Iraqi and Lebanese legislation in particular. This is due to the absence of a provision that includes a general rule encompassing all applications of civil liability arising from breaches of the medical partnership contract. Instead, such applications are scattered across various legislative texts. Therefore, compiling these applications to extract a coherent legal approach to civil liability in this context marks a serious starting point for investigating this issue. As with any beginning, it is challenging, but it offers a pathway to uncover all aspects of the concept.

Fourth: Research Methodology

In order to address the research problem posed within the scope of this study, we seek to examine the issue and propose effective solutions using a well-defined methodological framework. The most suitable approach for addressing the subject of this study is the analytical method, which involves analyzing legal texts relevant to the topic in light of jurisprudential theories and by referring to judicial rulings. Additionally, the comparative method has been employed in this research to study the legal systems of Iraq, Lebanon, and Egypt, with the aim of highlighting similarities and differences among them and illustrating how each system addresses the issue of

civil liability arising from breaches of the medical partnership contract, as well as its practical applications.

Fifth: Research Structure

To answer the proposed research problem, the study has been divided into two sections, each comprising two subsections. The first section discusses the applications of contractual physicians' breaches of professional and ethical standards in the medical field, while the second section addresses the applications of contractual physicians' breaches of obligations related to medical practice.

Section One

Applications of Contracted Physicians' Breaches of Professional and Ethical Standards in the Medical Profession

Every profession requires its practitioners to adhere to ethical principles and be guided by a sense of conscience especially when the profession is directly concerned with human life and existence. This foundational principle serves as a guiding force for physicians engaged in a medical partnership contract, compelling them to avoid mistakes as much as possible, to act with dedication, and to exert comprehensive effort in understanding the nature of illnesses, minimizing risks during surgical procedures, or administering medications.

Accordingly, alongside the legal rules governing the medical partnership contract, there exist ethical standards that assist the law in ensuring that physicians fulfill their obligations under the contract, in accordance with both legal and moral responsibilities. Neglecting any one of these whether the contract, ethics, or the law constitutes a breach of contract and a violation of the professional and ethical standards expected of physicians.

To address the significance of this topic, we divide this section into two subsections. The first subsection examines applications related to breaches of professional conduct rules, while the second focuses on applications related to breaches of ethical duties in the medical profession.

Subsection One

Applications Related to Breaches of Professional Conduct Rules

The forms of a physician's violation of these rules vary depending on the specific rule that has been breached. These include practicing medicine under a medical partnership contract without a license, forging medical certificates, using advertisements to attract patients an act considered a professional misconduct and violating the duty of medical confidentiality, which is mandated by the ethics and principles of the profession. To further clarify the topic, this subsection is divided into two parts. The first part addresses applications of non-compliance with professional laws and regulations, while the second part examines applications related to breaches of confidentiality.

Part One

Applications of Non-Compliance with Professional Laws and Regulations

The issue is not limited to holding a physician accountable merely for practicing medicine under a partnership contract without a license. The physician is also held accountable for any crimes committed during the practice of unlicensed medical work. Accordingly, they are punished based on the specific crime committed while engaging in such unauthorized practice.

An illustrative judicial application of this principle can be found in a decision issued by the Iraqi Criminal Cassation Court, which ruled as follows:

"A patient was admitted to the hospital after being involved in a traffic accident and was scheduled for surgery during which blood transfusions were needed. The on-duty female physician, upon the request of the physician in charge of the blood bank, performed the transfusion, which resulted in the patient contracting hepatitis, causing him to be unable to work for two months. It was later revealed that the female physician did not possess an officially recognized medical qualification permitting her to conduct such a procedure, and that the supervising physician was aware of this. This led to the establishment of criminal liability on both the physician and the female practitioner due to negligence, lack of precaution, and failure to comply with medical laws and regulations. As a result, the misdemeanor stipulated in Article 565 of the Penal Code was deemed applicable in this case."

The Egyptian Court of Cassation concluded in its rulings on a case involving a defendant who was not licensed to practice medicine:

"The defendant, lacking a medical license, extracted two teeth from the victim, which resulted in swelling of the right jaw. The court sentenced him according to the crime arising from this act. Thus, punishment is determined under Article 242 if the offense involves intentional injury, under Article 243 if it results in permanent disability, under Articles 268 and 269 if the offense constitutes indecent assault, and under Article 330 if it constitutes homicide."

An examination of the aforementioned judicial approaches and by analogy to medical partnership contracts reveals that these legislations attach special importance to medical licensing. They establish criminal liability for practicing medicine without a license and consider it an independent crime, separate from any other offense committed in the course of such practice.

Furthermore, Article 26 of the Lebanese Code of Medical Ethics states:

"It is prohibited for a physician to issue false reports or certificates as a courtesy."

This means that any physician or surgeon who issues false reports or inaccurate statements to favor another person is prohibited from doing so.

Likewise, Article 221 of the Iraqi Penal Code provides:

"Anyone who, personally or through another, fabricates a forged certificate indicating the existence of a disability for himself or others in the name of a physician or surgeon, with the intent of evading or assisting another to evade public service, shall be punished accordingly."

In a medical partnership contract, when a physician issues a certificate containing inaccurate information, even in good faith, they must exercise diligence and caution in drafting such certificates and verify the identity and status of the individual requesting it. Similarly, the physician in a medical partnership contract is required to diagnose the illness accurately and exert the same level of effort as a careful and conscientious doctor to ensure the certificate is precise and truthful. When the certificate is requested by someone other than the patient, responsibility falls upon the physician in error. Therefore, the physician must ascertain the identity, status, and purpose of the individual requesting the certificate.

Section Two: Applications of Breach of the Duty of Confidentiality

In a medical partnership contract, the principal physician must ensure that the participating physician is committed to maintaining professional confidentiality when concluding the partnership agreement. The participating physician is entrusted with the confidential information of the principal physician and the medical clinic. A breach of this obligation results in civil liability and may also entail criminal liability. Furthermore, both physicians in the medical partnership are considered trustees of the patients' information, and each is bound by the duty of professional secrecy.

In application of this principle, in a decision dated July 5, 2007, the Civil Court of Cassation ruled that:

"It is up to the physician to determine what constitutes a breach of professional secrecy. The assessment of whether disclosing information constitutes a violation of professional secrecy rests with the physician himself. Therefore, Dr. Brinsky should have refrained from testifying if he believed that the question posed would lead to such a disclosure. However, since he testified before the court, it implies that he did not consider his testimony to involve the disclosure of professional secrets."

This duty of confidentiality encompasses any information the patient shares with the physician, as well as anything the physician sees, learns, discovers, or deduces in the course of medical practice or as a result of medical examinations. It is not sufficient for the patient to waive the duty of confidentiality to exempt the physician from this obligation; the physician in a medical partnership contract remains bound to act in the patient's best interest and in accordance with public order. In application of this rule, the Mount Lebanon Court of Appeal ruled on November 4, 2006, that:

"Information obtained by the physician in the course of treating patients is considered protected by professional secrecy. The patient has the right to authorize the physician to disclose this information, but this right does not transfer to the heirs."

In cases of disclosure involving patients, if a physician is asked to examine a patient he does not know, or is called to treat a person who lacks or has diminished capacity, and he sees or hears something that must be kept confidential, the duty to maintain secrecy arises from the principle of respecting human dignity. Observing confidentiality is a matter of public order. The breach of this duty is considered a moral offense before being a civil or criminal one. Disclosing patients' secrets constitutes a violation of the legal obligation not to harm others and thus gives rise to liability.

Therefore, if a physician in a medical partnership discloses their patient's secrets, they have violated the legal duty not to cause harm. By revealing a patient's confidential information, the physician causes moral harm to the patient, thereby committing a professional fault as well as the crime of disclosure of secrets. Based on the foregoing, there is a legislative consensus in both Iraq and Lebanon on the physician's liability for breaching medical confidentiality. However, disagreement remains regarding the legal basis for this liability.

Section Two

Applications Related to the Breach of Ethical Duties in the Medical Profession

Failure to adhere to these ethical rules of the medical profession may expose physicians to criminal liability in addition to civil liability. To further elaborate on the subject, this section is

divided into two subsections. The first subsection addresses applications of breach of the duty to inform, while the second subsection discusses applications of breach of the duty to obtain patient consent.

Subsection One

Applications of Breach of the Duty to Inform

The obligation of physicians under a medical partnership contract to inform the patient is not limited to the stages of diagnosis and treatment; rather, it extends beyond the treatment phase. Regardless of the outcome of the therapeutic or surgical intervention, the primary objective of disclosure at this stage is to preserve the patient's condition by informing them of the diagnosis, the treatment outcome, and the necessary preventive measures aimed at protecting the patient's future health.

The patient must also be informed about post-operative precautions to avoid potential side effects. Based on this principle, the Iraqi Court of Cassation ruled that: “The physician’s failure to inform the patient after the surgery of the precautions necessary to avoid possible side effects constitutes a basis for establishing liability.”

In another ruling, the court held the physician liable for failing to inform the patient of all outcomes revealed by the diagnosis. This reflects that informing and disclosing information is a manifestation of respect for the patient's autonomy and is considered one of the obligations imposed on physicians by the medical partnership contract. The court stated: “The acceptance of a compensation claim filed by a woman against her physician who failed to inform her that her medical condition could affect her fetus and transmit the disease to him, resulting in the child being born deformed. Indeed, the child was born with deformities and died a few minutes after birth, depriving the mother of the opportunity to decide on terminating the pregnancy due to the fetal deformities and disease transmission.”

One of the earliest applications of the Patient Rights and Informed Consent Law, particularly Article 2 concerning the duty to inform, was considered by the Sole Criminal Judge in Tyre in a ruling dated 14/08/2012: “The negligence of the defendant (the physician) and his violation of the law is evident in his failure to inform the plaintiff of the seriousness of the surgical tooth extraction, the complications that may arise from it, and the potential consequences. This is in line with Article 2 of the Patient Rights and Informed Consent Law No. 574 dated 11/02/2004. Consequently, the physician’s act of causing harm to the patient, manifested by a broken jaw, resulted from his negligence, lack of caution, and violation of the law.”

Thus, the issue of the scope and dimensions of physicians' obligation to inform under the medical partnership contract is of utmost importance. There are two prominent opinions on this matter. One viewpoint holds that the patient must be informed of every detail regarding their health condition, medical intervention, the expected and unexpected risks, as well as alternative treatment options and choices... and all information that constitutes the patient's right to accept or reject treatment.

Section 2: Applications of Breach of the Duty to Obtain Patient Consent

The refusal of a patient to undergo treatment prescribed by one of the doctors in a medical partnership contract raises some of the most sensitive and precise issues. It is well established that individuals, at least adults, have the right to insist on refusing treatment. Therefore, if the

patient's consent to treatment or medical intervention is necessary, it is natural that the patient's refusal will have an impact on determining medical malpractice.

In application of the principle of the patient's right to refuse consent to treatment prescribed by one of the doctors in a medical partnership contract, the First Instance Court in Beirut, in its decision on 13/7/2015, ruled that: "The plaintiff patient is not liable for refusing to undergo the corrective surgery prescribed by the defendant doctor. This is because the doctor failed to inform the plaintiff about the potential complications that could result from the initial surgery, which necessitated a second corrective surgery with uncertain results. The failure to inform the plaintiff caused the patient to lose trust in the doctor, and it is quite natural for the patient to refuse the corrective surgery. The doctor should have borne all the costs related to the corrective surgery."

On the other hand, if a patient refuses to consent to a necessary examination to diagnose their condition, the treatment decision is considered erroneous. In this context, the Civil Court of Appeal in Beirut, in its decision dated 9/5/2002, held that: "It is established that the patient refused, after being admitted to the hospital, to undergo a diagnostic endoscopic examination under local anesthesia as advised by the doctors. Performing the endoscopy was necessary in this case to help diagnose and determine the patient's condition, which would help the doctor decide on the appropriate treatment, especially regarding whether surgery to remove organs was required. The patient's refusal to undergo the procedure contributed, to some extent, to missing the opportunity to confirm their condition and determine the appropriate treatment, and this contribution must be taken into account when determining compensation for the heirs."

In the decision of the Court of Cassation No. 8887/367 dated 7/11/2007, concerning the responsibility of two doctors for failing to obtain the patient's consent, the facts were summarized as follows: "The plaintiff (M) filed a claim with the Court of First Instance of Karada, stating that she was married to Dr. (Kh) and that he and Dr. (A) agreed to perform an abortion without her consent, under the pretext that she had taken harmless pregnancy safety pills. This was part of Dr. (Kh)'s plan to terminate the pregnancy and initiate a divorce. The plaintiff sought compensation. The First Instance Court rejected the case, but the Court of Cassation overturned this decision and ruled that Dr. (Kh) and Dr. (A) were responsible for performing the procedure without the patient's consent."

Chapter 2: Applications of Breach of Contractual Obligations of Medical Practitioners Regarding Medical Art

The breach by doctors in a medical partnership contract of the scientific principles of the medical profession and their failure to adhere to the established rules undoubtedly constitutes the core of medical errors that lead to civil liability in such contracts. The most common and severe medical errors, which have a significant impact in both medical and legal fields, are those related to the scientific principles and established standards of the medical profession and its technical procedures. Among the most notable and widespread of these errors are diagnostic and examination errors, treatment errors, and errors in analysis and radiology.

To emphasize the importance of the subject, this chapter will be divided into two sections. The first section will address the applications of breaches in the diagnostic and treatment stages, while the second section will cover the applications of breaches in technical and surgical stages.

Section 1: Applications of Breach in the Diagnostic and Treatment Stages

Naturally, the treatment of a patient begins with the doctor's diagnosis of the illness, which involves identifying and understanding the condition through radiological examinations and other diverse tests or through various medical analyses. This is followed by the direct treatment phase and the prescription of medications. Doctors in a medical partnership contract should exercise due care during the treatment period, as they have adequate time and the patient's condition is still far from requiring surgical intervention. To clarify this further, we will divide this section into two parts. The first part will address the applications of breaches in diagnosis, while the second part will focus on breaches in treatment.

Section 1: Applications of Breach in Diagnosis

The forms of diagnostic errors within the framework of the medical partnership contract are varied. To highlight this subject in more detail, we will address it from several perspectives, as follows:

1. If a doctor's error constitutes a clear negligence of the basic principles agreed upon by doctors in the contract, the error in diagnosis itself does not necessarily constitute a medical error. However, it can trigger the doctor's responsibility if it reveals a significant breach of the agreed priorities in the contract. This could be the case if the symptoms of the disease are apparent and clear to the extent that a doctor performing the diagnosis would not miss them.

In this regard, the Civil Court of Appeal in Beirut ruled that: "The doctor's failure to diagnose the disease before surgery and his negligence in using a medical tool that could have assisted in the diagnosis, all lead to the doctor's criminal responsibility and civil liability."

Additionally, in a ruling by the Iraqi Court of Cassation, it was determined that one doctor was responsible for a diagnostic error in a case involving a child who was admitted to the hospital with severe pain and redness in the left eye. The doctor diagnosed the condition as a serious disease requiring surgery, and surgery was performed based on this diagnosis. However, it was later revealed through medical reports that the child's eye had been reddened due to a blood clot caused by an external blow, and the medical committee, appointed by the Minister of Health at Ibn Al-Haytham Hospital, concluded that there was no justification for the surgery and that it was performed contrary to medical standards due to the diagnostic error.

If the diagnosis made by a doctor in the medical partnership contract was superficial, rushed, or involved neglect in paying attention to the diagnosis due to a lack of necessary care, which led to an incomplete understanding of the nature of the disease and the proposed treatment, this could lead to responsibility.

The Lebanese judiciary has ruled that the doctor's diagnosis of the disease involves identifying the disease, determining its characteristics, and understanding its causes. This is the first stage where the doctor begins their medical work. Due to the importance of this stage, the doctor must use all the technical means available to them to ensure an accurate diagnosis and must not rely solely on a superficial examination to avoid hasty conclusions.

The Iraqi Court of Cassation ruled that: "The disability suffered by the child resulted from a fracture in one of the neck bones, which was not treated in time due to the failure to X-ray the neck, despite the condition indicating the possibility of such a fracture. Although the treatment was supervised by the primary doctor and the assisting doctor, this constitutes a diagnostic error

that led to an error in treatment, which warrants compensation for the harm suffered by the child."

Section 2: Applications of Breach in Treatment

The establishment of a doctor's responsibility under the medical partnership contract requires the presence of an intention to harm others. This intention is derived from the circumstances of the case, such as when the patient is in a remote location with only one available doctor for treatment, or when the patient is in a critical condition requiring immediate intervention by the doctor, and the doctor is aware of the situation and could easily assist. The doctor is not allowed to refuse to respond to an emergency situation unless they are certain that no imminent danger to the patient exists.

In Iraq, in a case where the facts state that Dr. (N), an anesthesiologist at a public hospital, left a patient, prepared for surgery, without personally administering anesthesia. Instead, she delegated the task to a less experienced anesthesiologist, who, due to his lack of experience, caused the patient's death during surgery. The court ruled that both the doctor and the chief anesthesiologist were liable.

Similarly, French civil law applies the "lost opportunity" theory within the framework of civil responsibility. Under this theory, a doctor is held responsible for the lost opportunity to cure the patient or improve their condition. Compensation is awarded only for the lost opportunity, not for death or physical harm itself, because the loss of the opportunity constitutes damage in itself, and compensation is calculated based on the opportunity the patient was deprived of.

A doctor is relieved of responsibility under the medical partnership contract if there is a valid reason for refusing or delaying treatment. For instance, if the doctor is treating a more critical patient or if there is no imminent danger to the patient. In such cases, the doctor must explain their reasons. Additionally, if the doctor works in a private clinic and is called to treat another patient but cannot leave their current patients, they are not held responsible.

In another case, the Giza Criminal Court in Egypt ruled that a doctor was responsible for failing to monitor the patient at his clinic and for not checking on her daily, as her condition required such attention. The court stated that the doctor could not escape this responsibility by claiming the patient was poor. The doctor was obligated to consider this aspect before performing the surgery. The doctor had the option to either accept responsibility and perform the duty fully or to refuse and have the patient's family take responsibility by sending her to a hospital or leaving her to die, in which case the doctor would not be liable.

Section 2: Applications Related to Breach in Technical and Surgical Stages

Technical procedures hold great benefits for many people, but they also carry significant risks to human life, requiring that doctors, especially within the medical partnership contract, exercise a high degree of caution, precision, and care while performing them. To further explain the topic, we will divide this section into two parts: the first part discusses applications related to breaching some technical procedures, while the second part covers applications related to errors occurring in surgical operations.

Part 1: Applications Related to Breach in Some Technical Procedures

To shed light on applications related to breaches in certain professional tasks under the medical partnership contract in more detail, we will approach the topic from several aspects as follows:

First: Breach in Radiology and Laboratory Tests

A doctor is presumed to have made a mistake once damage occurs as a result of using radiology, considering the significant technical advancements made by science to improve radiology equipment, ensure its effectiveness, and provide the necessary features to prevent harm.

French courts have also held doctors responsible for failing to conduct preliminary tests on a patient before prescribing treatment, especially when such treatment is rarely used due to its associated risks. This is because the use of such treatment requires confirming the patient's condition and their ability to withstand its effects.

Second: Breach in Anesthesia Procedures

A mistake in anesthesia within the medical partnership contract occurs when anesthesiologists fail to ensure the patient's safety during a surgical procedure or medical examination. This could include administering inappropriate doses of anesthetic drugs, failing to properly monitor the patient's vital functions, or providing inadequate care during the anesthesia period.

One of the rulings of the Iraqi Court of Cassation stated: "The hospital director is responsible for the error of the contracted anesthesiologist who administered nitrogen gas instead of oxygen during the anesthesia procedure, resulting in the patient's death less than five minutes after entering the operating room. This happened due to the hospital's negligence in verifying the gas cylinders and confirming the type of gas in each cylinder, especially since the cylinders appeared similar in shape and color."

The Baghdad Court of Appeal, in its appellate capacity, held the anesthesiologist responsible and sentenced her under Article 411/F of the Penal Code. The court determined that the cause of death was due to the anesthesiologist's failure to recognize and prevent the complications that occurred. The court absolved the contracted surgeon from responsibility as no surgical negligence was proven.

In Lebanese jurisdiction, the Judge of the Penal Court in Beirut ruled: "The anesthesiologist is responsible for his actions and those of the contracted physicians and their assistants throughout the period he is responsible for anesthesia, until the patient has fully regained consciousness. The anesthesiologist is accountable for any complications the patient experiences during this period, even if the nurse is tasked with assisting or monitoring the patient during recovery from anesthesia."

Second Subsection: Applications Related to Surgical Errors

Performing any surgical procedure within the scope of a medical partnership contract requires doctors to adhere to precision and care according to the conditions and principles agreed upon in the contract. This includes exercising caution during the surgical intervention, carrying out all required medical procedures such as examinations and diagnosis, and consulting a colleague with greater expertise in specific medical equipment when the doctor is uncertain about the patient's condition.

In this regard, the Iraqi judiciary ruled: "Forgetting any foreign object inside the patient's body, which led to significant harm, such as a gauze, and necessitated a second surgery, is considered a grave mistake that entails the responsibility of the healthcare institution."

The Civil Court of Appeals in the Beqaa region, in a decision dated 1/7/2010, considered: "Serious complications during the childbirth process, including the wrong choice of delivering the child naturally, and the continuation of this choice despite the severe risks to the mother's and fetus's health, ultimately led to the removal of the mother's uterus due to severe bleeding during labor after the baby was delivered. Additionally, an error by the doctor's assistant caused the kidney's main vessel to be improperly sutured, leaving one artery uncauterized, which led to persistent bleeding. This situation resulted in severe complications requiring later treatment, including the closure of the bleeding artery and subsequent therapies."

A surgeon is obligated to perform the surgery personally within the framework of the medical partnership contract. It is not permissible for the doctor to delegate the operation to another, even if that person is more senior, without the patient's or their family's consent. The doctor is also required to ensure the nature of the drugs used and the safety and stability of the equipment employed in the surgery.

As for the Iraqi legislator's stance on cosmetic surgery and the doctor's duty to inform, this issue has not been directly addressed, despite its significance. Therefore, it is hoped that the legislator will consider this matter and include a provision such as: "The cosmetic surgeon must inform the patient undergoing cosmetic surgery of the potential risks and consequences, and this information must be provided in writing."

The Civil Judge in Beirut, in a ruling dated 30/6/2011, stated: "A cosmetic surgery on the nose does not require extensive explanation, as it has become a common procedure. This differs from surgeries on internal and vital organs of the body, which require more caution and thorough explanation to the patient, ensuring they fully understand the procedure and its potential risks."

Conclusion

In cases of professional misconduct by doctors, responsibility arises from their actions. While these ideas are clear and not ambiguous, the foundation of a doctor's duty and the responsibility attached to it remains challenging to define. This is especially true considering the significant impact of the technical nature of medical practice on understanding the obligations of a doctor within a medical partnership contract. Whether the relationship between participating doctors or between a doctor and a patient is governed by the contract or subject to general rules, the reference for determining its scope is the medical profession's standards.

However, legislative regulation in Iraq, along with comparative laws, has failed to properly address the provisions of medical partnership contracts and the consequences arising from them. This is due to the slow pace of legislative processes in keeping up with legal and life developments, and the unanticipated emergence of such contracts. Therefore, after completing our study, we have reached a set of conclusions...

First: Results

1. Medical Partnership Contracts: Medical partnership contracts are relatively new and are governed by general legal rules. These contracts are consensual, formed by mutual agreement between the parties. They are also considered contractual agreements of exchange, where both parties receive something in return for what they give. Additionally, these are continuous contracts where time plays a crucial role.

2. **Nature of Medical Partnership Contracts:** In most cases, medical partnership contracts are partnership agreements, as there is an agreement for the primary doctor to receive a percentage of the fees earned by the participating doctor when using the primary doctor's clinic. In some cases, these contracts may resemble lease agreements. In other instances, the primary doctor may not receive compensation from the participating doctor, especially if the contract is relatively short in duration. In these cases, the primary doctor's benefit lies in maintaining their clinic's operations to avoid losing clients, as well as ensuring the continued care of patients who regularly visit.

3. **Rights and Obligations of the Parties:** Medical partnership contracts entail a set of rights and obligations for both parties. These rights and obligations derive from the signed contract, the law (including legal regulations and medical practice guidelines), and customary practices in the medical profession. These obligations apply to both doctors in their relationship with each other and in their relationship with the patient. In return, each party enjoys certain rights against the other party in the contract.

4. **Civil Responsibility:** Civil responsibility is placed on doctors in the medical partnership contract when they breach the mutual obligations set forth by the agreement. For instance, the primary doctor may violate the contract by failing to inform the patient about the participation of another doctor or by not allowing the participating doctor to use the clinic. On the other hand, the participating doctor may breach their obligations by failing to pay the primary doctor or damaging the reputation or assets of the clinic. There are also other possible breaches in medical partnership contracts. Civil responsibility is also present when doctors fail in their duties toward the patient, such as neglecting professional obligations.

5. **Joint Liability:** In cases where the patient is harmed, the liability of the members of the medical partnership contract may be joint. This is applicable when certain conditions are met, such as an agreement to share responsibility, multiple errors, a single cause of damage, and the causal link between the error and the damage. Once the doctor's liability in the medical partnership contract is established, they are obligated to compensate for the harm caused to the patient due to their wrongful act.

6. **Legislative Attention to Medical Partnerships:** Medical partnerships in clinics and hospitals require specific legislative attention due to their direct impact on public health. This necessitates a legal framework to regulate contracts that involve medical partnerships, ensuring the rights and obligations of the parties involved while safeguarding patient health.

Second: Recommendations

1. **Unified Legislation for Private Medical Clinics:** We recommend that the Iraqi legislator draft a unified law to regulate the establishment, management, and operation of private medical clinics, instead of relying on scattered health regulations. This should include specific provisions regarding the replacement of doctors in medical clinics under certain conditions, such as obtaining approval from the Iraqi Medical Association, registering the participating doctor with the association, and notifying patients about the changes if such a replacement occurs.

2. **Regulation of Private Health Sectors:** Given the global trend toward privatizing public sectors, including the rise in private health sectors and medical partnership contracts, it is essential to establish regulatory bodies to monitor the operation of medical partnership contracts in private medical facilities. These bodies should ensure that medical equipment is safe and services are provided in accordance with legal standards.

3. Establishment of Specialized Medical Courts: While it is important to establish specific laws for regulating medical partnership contracts, it is even more crucial to set up specialized medical courts to handle medical disputes, particularly those arising from medical partnership contracts, similar to the system in France.

4. Mandatory Medical Liability Insurance: We recommend that the Iraqi legislator implement a mandatory medical liability insurance system for doctors in medical partnership contracts. This would facilitate compensation for patients who suffer harm due to medical errors and assist doctors in resolving compensation issues. Additionally, such insurance would encourage doctors to innovate and enhance their medical practices.

5. Medical Ethics and Responsibility Curriculum: We suggest that the Iraqi legislator introduce a proposed law regarding medical liability, ethics, and responsibilities, which should be taught as a mandatory subject in medical schools and institutes. This law should also emphasize the importance of medical responsibility through public awareness campaigns via media and periodic seminars.

References

First: Legal Books

- Jabari, I. M. (2011). Legal responsibility for medical errors in light of Federal Law No. 10 of 2008 on medical responsibility (A comparative study) (1st ed.). Dar Al-Jamia Al-Jadida.
- Al-Sheikh, B. (2002). Legal responsibility of the doctor: A study in the general provisions of comparative laws and judicial trends (1st ed.). Al-Dar Al-Jami'iyah.
- Al-Jubouri, B. F. H. (2006). Personal rights and their civil protection (1st ed.). Al-Maktaba Al-Qanouniyya.
- Zaal, H. A. (2001). Illegal acts with human organs in criminal law (1st ed.). Dar Al-Thaqafa for Publishing and Distribution.
- Al-Qaisar, H. J. (2021). Civil responsibility of the doctor for medical errors in organ transplantation and transplantation (A comparative study) (1st ed.). Al-Maktaba Al-Qanouniyya.
- Al-Shawwa, H. S. (2004). Medical errors before the criminal judge: A comparative study (1st ed.). Dar Al-Nahda Al-Arabiyya.
- Al-Kassar, S. A. (2012). Tortious acts – Tort liability: A comparative study (1st ed.). Dar Al-Thaqafa for Publishing and Distribution.
- Rushdi, M. S. (2008). Irreparable mistake: Malicious conduct and intent in the laws of France, Egypt, and Kuwait (1st ed.). Kuwait University Press.
- Ahmad, M. S. (2008). Mistakes and the true basis of civil liability in Iraqi law (1st ed.). Office of Interpretation for Publishing and Advertising.
- Al-Qadi, M. (2002). Tortious acts in the Iraqi Civil Code (3rd ed.). Dar Al-Ma'arif Press.
- Khalil, H. A. (2016). Medical civil responsibility (1st ed.). Al-Sabah Library.

Second: Theses and Dissertations

- Al-Ubaydi, A. Y. S. M. (2018). Civil responsibility of the medical team (Doctoral dissertation, Faculty of Law, Benha University, Egypt).
- Al-Abido, A. K. (n.d.). Medical responsibility for the actions of others (Doctoral dissertation, Faculty of Law, University of Menoufia, Egypt).
- Al-Bayati, A. Z. M. (2019). The doctor's duty of medical disclosure and its effect on the loss of opportunity: A comparative study (Doctoral dissertation, College of Law, University of Baghdad, Iraq).

Al-Bayati, N. K. S. (2020). Civil responsibility of the anesthesiologist: A comparative study (Doctoral dissertation, Faculty of Law, University of the Middle East, Jordan).

Third: Journals and Periodicals

- Abu Al-Lail, I. A. D. (n.d.). Compensation for the loss of opportunity. *Al-Haq Kuwaiti Journal*, 10(3).
- Al-Hayani, I. A. (n.d.). Compliance with conformity in pharmaceutical sales contracts. *Tikrit University, Journal of the Faculty of Law*, 1(2), Iraq.
- Mohammed, I. L. (2021). The legal nature of the doctor's civil responsibility: A comparative study. *Lark Journal of Philosophy, Linguistics, and Social Sciences*, 4(43), Iraq.
- Emaduddin, B. (2017). Medical civil liability insurance and its importance: A comparative study. *The Lawyer Journal, Special Issue on Medical Responsibility in Light of Law and Judicial Precedents*, 28.
- Khairallah, T. (n.d.). The surgeon's responsibility for professional errors. In *The Specialized Collection on Legal Responsibility of Professionals, Volume 1: Medical Responsibility* (4th ed.). Publications of the Legal Research House.
- Al-Shamsi, J. A. (2004). Medical and pharmaceutical responsibility. In *The Specialized Collection on Legal Responsibility of Professionals, Volume 1: Medical Responsibility* (1st ed.). Publications of the Legal Research House.
- Abbas, S. S. (n.d.). Joint responsibility for tortious acts in Iraqi civil law: A comparative analytical study. University of Kirkuk, College of Law and Political Science, *Journal of the College of Law*.
- Al-Jamal, M. (2004). Civil responsibility for medical acts in doctrine and jurisprudence. In *The Specialized Collection on Legal Responsibility of Professionals, Volume 1: Medical Responsibility* (2nd ed.). Publications of the Legal Research House.
- Qazmar, N. M. M. (n.d.). The limits of civil responsibility within the obligation to exert care and achieve results. *Journal of Middle East Research*, 48, Egypt.

Fourth: Laws

- Iraqi Civil Code No. (40) of 1951.
- Iraqi Civil Procedures Law No. (83) of 1969.
- Iraqi Penal Code No. (111) of 1969.
- Iraqi Medical Association Law No. (81) of 1984.
- Iraqi Law on Organ Transplantation and Transplantation No. (11) of 2016.
- Iraqi Medical Committees Instructions No. (1) of 1995.
- Lebanese Code of Obligations and Contracts (1932).
- Lebanese Code of Civil Procedures No. (90) of 1983 (amended).
- Lebanese Medical Ethics Code No. (288) of 1994 (amended).
- Lebanese Patient Rights and Informed Consent Law No. 574 of 2004.
- Lebanese Law on Regulating Medical Practice (1979).
- Lebanese Health Law No. (1655) of 1979.
- Egyptian Civil Code No. (131) of 1948.
- Egyptian Civil and Commercial Procedures Law No. (13) of 1968.
- Egyptian Medical Practice Law No. 415 of 1954.
- Egyptian Code of Medical Ethics No. 238 of 2003.